IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4820 OF 1993

Haribau Abbasaheb Patil
Indian Inhabitant, residing at &
Post Avali, Taluka Panhala,
Dist: Kolhapur ... Petitioner

Vs.

1.The State of Maharashtra
(through the Add. Government
Pleader, High Court, Mumbai)

2. The Chief Executive Officer
Zilla Parishad Kolhapur
Kolhapur

3. The Block Development Officer
Zilla Parishad Kolhapur,
Dist: Kolhapur ... Respondents

Mr. Sachin Manale for the Petitioner
Mr.A.P.Vanarase A.G.P. for Respondents

CORAM : R.M.S.KHANDEPARKAR &
SMT. ROSHAN DALVI, JJ.
DATED : 18TH MARCH 2006.

ORAL JUDGEMENT (PER R.M.S.KHANDEPARKAR, J.)

1. Heard.

2. The Petitioner challenges the order passed

by the Respondent for recovery of an amount of Rs.4628/- from the Petitioner on the ground that the said amount was paid in excess to his entitlement as salary, consequent to the Petitioner's appointment as Primary Teacher in Kolhapur District.

3. The Petitioner was initially appointed as a Primary School Teacher with the Zilla Parishad, Ratnagiri on 30th September 1972 in the pay scale of Rs.115-210 and at that time the Petitioner's qualification was S.S.C.D.Ed. The Petitioner, on successful completion of the graduation in the year 1977, in terms of the policy of the Respondent No.1, became qualified for Graduate Salary to the Primary School Teacher in the scale of Rs.365-760. The same was accordingly granted to the Petitioner under order dated 6th October 1980. Though the Petitioner was employed in the district of Ratnagiri he belongs to the Kolhapur District and on account of old age of his parents residing at Kolhapur, he requested for his transfer to the Kolhapur Zilla Parishad. His request was favourably considered by the Respondent No.1 and accordingly by an order dated 8th August 1983, his transfer of Kolhapur Zilla Parishad was approved. Consequent to the order dated 6th October 1983, he

was appointed as Primary School Teacher in Kolhapur Zilla Parishad. The Petitioner continued to draw the salary payable in terms of Government policy dated 14th November 1979 in the scale of 365-760. The Respondents, however by impugned order held that since the Petitioner was not appointed as the teacher for the Vth to VIIth classes he was not entitled to graduate scale i.e. In the scale of 365-760, but he was entitled for the scale of 290-540 and on calculation of the actual amount paid and deducting therefrom the amount which was actually payable to the Petitioner in terms of the scale of 290-540 , the Respondent held that an amount of Rs.4628/- was paid in excess to the Petitioner for the period from 1st November 1983 till 30th April 1990 and further sought to recover the same from his salary.

4. It is the contention of the Petitioner that in terms of the Government Policy dated 14th November 1979 Petitioner was granted graduate scale i.e. 365-760 by order dated 6th October 1980 and on transfer of the Petitioner to Kolhapur Zilla Parishad, the same was continued and therefore, there was no justification for the Respondent to contend that there was any payment of salary in excess of amount duly

payable to the Petitioner for the relevant period. In any case placing reliance in the decision of the Apex Court in the matter of Syam Babu Verma & Ors. Vs. Union of India & Ors. reported in (1994)2 Supreme Court Cases, 521 it is sought to be contended that since the salary in the scale of 365-760 was paid to the Petitioner for no fault of the Petitioner, it would be just and proper not to recover the alleged excess amount paid to him. The learned Advocate appearing for the Petitioner has also fairly submitted that the Petitioner has already been granted graduate scale with effect from 1995.

5. It is the contention of the Respondent that the Petitioner though was granted graduate scale while he was in the employment of Ratnagiri Zilla Parishad, his appointment in Kolhapur Zilla Parishad was as a primary school teacher and not for the Classes of Vth to VIIth standards, but essentially for Ist to Ivth standard classes and therefore, the Petitioner cannot claim the benefit of the policy of the Government Resolution Dated 14th November 1979. It is their further contention that when the Petitioner was appointed in the services of Kolhapur Zilla Parishad on 1st November 1983 there were 769 graduate primary

teachers who were senior to him and there were 658 posts for graduate primary teachers under Kolhapur Zilla Parishad out of which 604 posts were already filled in by giving promotions to the teachers who were entitled to be promoted in the said scale. Though there were 54 posts vacant, there were 117 graduate primary teachers senior to the Petitioner and had to be promoted to the post and therefore, the Petitioner had to wait in queue to claim the graduate scale.

6. The above stated facts are not in dispute. The Government Resolution Dated 14th November 1979 apparently discloses that the graduate scale is made available only to those teachers who are employed to teach for the students in Vth to VIIth standards where such classes are conducted by the primary school or by secondary school. It is also undisputed fact that the transfer of the Petitioner from Ratnagiri to Kolhapur Zilla Parishad was on his own request and for his own convenience. It is a matter of record that on such transfer the Petitioner was given fresh appointment on 6th October 1983 by a letter of the same day and it carried specific conditions for his appointment. They read as follows :

"(i) His appointment in Kolhapur Zilla Parishad shall be for the purpose of seniority and rank by the junior most in the cadre of primary teachers as also stands on the date of appointment.

(ii) His appointment under Kolhapur Zilla Parishad is subject to the terms and conditions mentioned by the Kolhapur Zilla Parishad in the Resolution in the preamble at the serial no.1 above.

(iii) This appointment is made on temporary basis and can be terminated at any time without notice assigning any reason therein."

7. Plain reading of the appointment letter therefore discloses that consequent to the approval for transfer of the Petitioner to Kolhapur Zilla Parishad, he was inducted in the services of Kolhapur Zilla Parishad as a fresh recruit and subject to the terms and conditions attached to his appointment which were never disputed or challenged by the Petitioner. Being so it is apparent from the records that the Petitioner had knowingly accepted his appointment as a primary

school teacher in primary school. Added to this it is not the case of the Petitioner that consequent of his appointment in the services of Kolhapur Zilla Parishad he was directed to teach the students in Vth or VIth or VIIth standards. The clear finding arrived by the competent authority while passing impugned order discloses that his appointment was essentially to teach the primary section students and not for the students in Vth to VIIth standards. Obviously therefore graduate scale of 365-760 was not to be granted to the Petitioner, more particularly in view of the fact that he was recruited for the services in Kolhapur Zilla Parishad by order dated 6th October 1983 as a fresh recruit. The order itself discloses that he was to be junior most in the cadre and that was not disputed by the Petitioner at any point of time. Even in the Petition no grievance has been made in that regard. The Respondents have placed on record a copy of the said order along with their affidavit. Even thereafter also the Petitioner has not made any attempt to amend the Petition to challenge the said order, perhaps rightly so as he was aware that he was appointed under letter dated 6th October 1983 to teach in the primary section and that is why he further accepted the graduate scale since the year 1995

without any reservation or protest. These facts clearly disclose that the Petitioner's claim for graduate scale from the date of his appointment in the service of Kolhapur Zilla Parishad is without any substance.

8. It is not the case of simple transfer from one unit to another unit i.e. from Ratnagiri Zilla Parishad to Kolhapur Zilla Parishad. If it was a mere transfer in that regard, one could have understood. In that case the pay of the Petitioner would not have been disturbed. However, in the case of Petitioner he was given a fresh appointment which he accepted without any reservation.

9. The decision of Apex Courts in Shyam Babu's case is of no help to the Petitioner. In that case it was observed that though the Petitioners therein were entitled for a salary in the scale of 330-480 in terms of recommendations of IIIrd Pay Commission with effect from 1st January 1973 and it was only after a period of 10 years that they had become entitled to the pay scale of 330-560 but in fact they had received a salary in the scale of 330-560 since 1970 due to no fault on their part and when the scale was sought to be reduced in the year 1984. In those facts the Apex

Court observed that it was only just and proper not to recover any excess amount which had been paid to the Petitioners therein. That is not the case in the hand. The Petitioner was drawing the scale of 365-760 which is a graduate scale available to the teachers who teach to the students in Vth to VIIth standards even though they are primary school teachers in view of the policy of the Government under Government Resolution dated 14th November 1979, consequent to such scale having been granted to the Petitioner while he was in the service in Ratnagiri Zilla Parishad and where he was teaching the students in the class of Vth to VIIth standards. Undisputedly when he took up the employment in Kolhapur Zilla Parishad he was appointed as a primary school teacher in the primary section. Merely because by mistake pay of Petitioner had been drawn in the scale as was being drawn while in the service of Ratnagiri Zilla Parishad, contrary to the policy of the Government disclosed from Government Resolution dated 14th November 1979 for the period from 1983-1990, that itself will not be a justification to allow him to retain such an excess amount of salary collected by him for the specified period bearing in mind the provisions of Section 72 of the Indian Contract Act. Though the said provision of

law may not be directly applicable to the case, the fact remains that the excess amount was paid to the Petitioner by mistake. It is nobody's case that the Petitioner was duly entitled for the salary in the scale of 365-760 from November 1983 till the year 1990, more particularly in view of the fact that he was appointed as a junior most teacher in the service of Kolhapur Zilla Parishad and that there were nearly 117 teachers senior to him who had a claim for 54 vacancies which were existing at the time of the entry of the Petitioner in the services of Kolhapur Zilla Parishad.

10. In the result therefore there being no case made out for the grant of relief as prayed for, the Petition fails. Needless to observe that the recovery which is sought from the Petitioner is not by way of any disciplinary action but merely because excess payment made by mistake, hence the Petition is dismissed.

11. Rule is discharged. There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J.)

(SMT. ROSHAN DALVI, J.)